

Sep 11, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AUTOMATED ACCOUNTS INC., a
corporation formed under Washington law,
and BONDED ADJUSTMENT
COMPANY, a corporation formed under
Washington law;
Plaintiffs,
v.
JOHN C. HEATH ATTORNEY AT
LAW PC d/b/a LEXINGTON LAW,
and LEXINGTON LAW FIRM, a
professional service corporation
formed under Utah law;
Defendant.

No. 2:18-cv-00162-SAB

**ORDER GRANTING
PLAINTIFFS' MOTION TO
REMAND**

Before the Court is Plaintiffs' Motion to Remand, ECF No. 6. The motion was heard without oral argument. Plaintiffs are represented by Timothy W. Durkop; Defendant is represented by Scott R. Smith.

Plaintiffs sued Defendant in Spokane County Superior Court alleging claims under the Washington Unfair Business Practices Act. Defendant removed the action on May 18, 2018, maintaining the allegations asserted by Plaintiffs implicated the Fair Credit Reporting Act and the Fair Debt Collection Act, and

1 therefore the Court would have jurisdiction under 28 U.S.C. § 1331. Defendant
2 also cited to 28 U.S.C. § 1332, but did not allege any facts regarding the amount in
3 controversy.

4 **BACKGROUND FACTS**

5 The following facts are taken from Plaintiffs' Complaint:

6 Plaintiffs are in-state collection agencies with their principle places of
7 business in Spokane County. They allege that Defendant holds itself out as a
8 professional credit repair service. Defendant is incorporated in the State of Utah.
9 Plaintiffs allege that Defendant contracts with its customer to remove negative
10 data from its customer's credit reports. In return, Defendant sends letters to
11 creditors to dispute the amounts owed. Plaintiffs have received thousands of letters
12 from Defendant purportedly representing consumers.

13 Plaintiffs' obligations under the Fair Debt Collection Practices Act require
14 them to respond to these inquiries. Plaintiffs have to investigate and then file a
15 response. Plaintiffs state that the letters look like they are from the consumer, but
16 in fact the letters are coming from Defendant. In many cases, the return address is
17 incorrect and the response letters are returned to Plaintiffs as undeliverable.

18 Plaintiffs maintain in virtually all of the alleged disputes, there were, in fact, no
19 disputes. Rather, the information was correct. On multiple occasions, the credit
20 report indicated that the consumer had paid the debt in full. Defendant would
21 have, or should have known this before sending the letter.

22 Plaintiffs allege they have spent thousands of hours of labor on having to
23 respond to the letters and they would not have had to do this but for Defendant's
24 actions in sending false and misleading letters to dispute credit reports. Plaintiffs
25 allege that Defendant's business model represents an unfair business practice
26 under Wash. Rev. Code § 19.86.020.

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1 ANALYSIS

2 Section 1441(a) permits “any civil action brought in a State court of which
3 the district courts of the United States have original jurisdiction, may be removed
4 by the defendant. . . .” 28 U.S.C. § 1441(a). The Court is to strictly construe the
5 removal statute against removal jurisdiction and federal jurisdiction must be
6 rejected if there is any doubt as to the right of removal in the first instance. *Gaus v.*
7 *Miles, Inc.*, 980 F.2d 564, 556 (9th Cir. 1992). The defendant has the burden of
8 establishing that removal is proper. *Id.*

9 Defendant relies on 28 U.S.C. §§ 1331 and 1332 to support the removal of
10 this action to federal court.

11 **1. 28 U.S.C. § 1331 - Federal Question**

12 Only state-court actions that originally could have been filed in federal court
13 may be removed to federal court by the defendant. *Caterpillar Inc. v. Williams*,
14 482 U.S. 386, 391 (1987). “The presence or absence of federal-question
15 jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that
16 federal jurisdiction exists only when a federal question is presented on the face of
17 the plaintiff's properly pleaded complaint.” *Id.* (citing *Gully v. First Nat’l Bank*,
18 299 U.S. 109, 112–113, (1936)). The rule makes the plaintiff the master of the
19 claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.
20 *Id.*

21 Here, it is clear Plaintiffs have not alleged a federal claim. Defendant’s
22 argument that because the federal statute imposes duties on Plaintiffs this
23 somehow converts this state action to a federal one is not supported by case law.

24 **2. 28 U.S.C. § 1332 – Diversity Jurisdiction**

25 28 U.S.C. § 1332(a) provides: The district courts shall have original
26 jurisdiction of all civil actions where the matter in controversy exceeds the sum or
27 value of \$75,000, exclusive of interest and costs, and is between--(1) citizens of
28 different States.

1 Here, there is no dispute that this suit is between citizens of different States.
2 Rather, whether the Court has jurisdiction over this matter depends on the amount
3 in controversy.

4 Plaintiffs are seeking actual damages based on labor costs responding to
5 Defendant's alleged wrongful credit disputes, statutory damages pursuant to
6 Wash. Rev. Code § 19.86.090, and attorneys' fees.

7 Where it is not facially evident from the complaint that more than \$75,000
8 is in controversy, the removing party must prove, by a preponderance of the
9 evidence, that the amount in controversy meets the jurisdictional threshold.
10 *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).
11 Where doubt regarding the right to removal exists, a case should be remanded to
12 state court. *Id.* The Court can consider facts presented in the removal petitions as
13 well as any "summary-judgment-type evidence relevant to the amount in
14 controversy at the time of removal." *Id.* Conclusory allegations as to the amount in
15 controversy are insufficient. *Id.*

16 Wash Rev. Code § 19.86.090 provides:

17 Any person who is injured in his or her business or property by a
18 violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or
19 19.86.060, or any person so injured because he or she refuses to
20 accede to a proposal for an arrangement which, if consummated,
21 would be in violation of RCW 19.86.030, 19.86.040, 19.86.050, or
22 19.86.060, may bring a civil action in superior court to enjoin further
23 violations, to recover the actual damages sustained by him or her, or
24 both, together with the costs of the suit, including a reasonable
25 attorney's fee. In addition, the court may, in its discretion, increase
26 the award of damages up to an amount not to exceed three times the
27 actual damages sustained: PROVIDED, That such increased damage
28 award for violation of RCW 19.86.020 may not exceed twenty-five
thousand dollars: PROVIDED FURTHER, That such person may
bring a civil action in the district court to recover his or her actual
damages, except for damages which exceed the amount specified in
RCW 3.66.020, and the costs of the suit, including reasonable

1 attorney's fees.

2 Defendant asks this Court to aggregate the amount of statutory damages
3 sought by each Plaintiff, add \$25,000 for attorneys' fees, and infer that actual
4 damages will be at least \$1.00 to meet the amount in controversy threshold.

5 The Court declines to aggregate the amount of damages. As the United
6 States Supreme Court explained:

7 The traditional judicial interpretation under all of these statutes has
8 been from the beginning that the separate and distinct claims of two
9 or more plaintiffs cannot be aggregated in order to satisfy the
10 jurisdictional amount requirement. Aggregation has been permitted
11 only (1) in cases in which a single plaintiff seeks to aggregate two or
12 more of his own claims against a single defendant and (2) in cases in
13 which two or more plaintiffs unite to enforce a single title or right in
14 which they have a common and undivided interest.

15 *Snyder v. Harris*, 394 U.S. 332, 335 (1969).

16 Aggregation of claims is limited to cases "where a defendant owes an
17 obligation to a group of plaintiffs as a group and not to the individuals severally."
18 *Gibson v. Chrysler Corp.*, 261 F.3d 927, 944 (9th Cir. 2001)).

19 In this case, Plaintiffs are bringing claims based on letters sent by Defendant
20 that disrupted their businesses. Although Plaintiffs are enforcing the same right
21 granted by state law, the claims are separate and distinct because they can be
22 separated by which party received particular letters, and the claims are cognizable,
23 calculable, and correctable individually. Consequently, Plaintiffs' claims do not
24 arise out of a common and undivided interest.

25 The record does not support a finding that the amount in controversy for
26 each Plaintiff will exceed \$75,000. Defendant has not met its burden of proving
27 diversity jurisdiction.

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1 **3. Attorneys Fees**

2 28 U.S.C. § 1447(c) provides:

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4 A motion to remand the case on the basis of any defect other than
5 lack of subject matter jurisdiction must be made within 30 days after
6 the filing of the notice of removal under section 1446(a). If at any
7 time before final judgment it appears that the district court lacks
8 subject matter jurisdiction, the case shall be remanded. An order
9 remanding the case may require payment of just costs and any actual
10 expenses, including attorney fees, incurred as a result of the removal.
11 A certified copy of the order of remand shall be mailed by the clerk to
12 the clerk of the State court. The State court may thereupon proceed
13 with such case.

14 As the United States Supreme Court noted:

15 The process of removing a case to federal court and then having it
16 remanded back to state court delays resolution of the case, imposes
17 additional costs on both parties, and wastes judicial resources.
18 Assessing costs and fees on remand reduces the attractiveness of
19 removal as a method for delaying litigation and imposing costs on the
20 plaintiff. The appropriate test for awarding fees under § 1447(c)
21 should recognize the desire to deter removals sought for the purpose
22 of prolonging litigation and imposing costs on the opposing party,
23 while not undermining Congress' basic decision to afford defendants
24 a right to remove as a general matter, when the statutory criteria are
25 satisfied.

26 *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 140 (2005).

27 Thus, “[a]bsent unusual circumstances, courts may award attorney’s fees
28 under § 1447(c) only where the removing party lacked an objectively reasonable
29 basis for seeking removal. Conversely, when an objectively reasonable basis
30 exists, fees should be denied.” *Id.*

31 Here, Defendant did not have an objectively reasonable basis for seeking
32 removal. It is obvious that Plaintiffs are seeking remedies under state law and are
33 not bringing a federal claim. Although Defendant cited to § 1332 in its Notice of

1 Removal, it failed to allege any facts regarding the amount in controversy.
2 Subsequently, in response to the Motion to Remand, Defendant relied on
3 conjecture and speculation to assert that the amount in controversy requirement
4 has been met.

5 The Court will retain jurisdiction following remand to resolve the award of
6 attorney's fees and costs. *Moore v. Permanente Med. Grp., Inc.*, 981 F.2d 443, 445
7 (9th Cir. 1992) (holding that the district court may retain jurisdiction over
8 collateral attorney's fees issue after remand).

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Plaintiffs' Motion to Remand, ECF No. 6, is **GRANTED**.

11 2. The District Court Executive is directed to **remand** the above-captioned
12 case to Spokane County Superior Court.

13 3. Within seven (7) days from the Date of this Order, Plaintiffs shall file an
14 affidavit supporting their application for attorney's fees and costs relating only to
15 the issue of removal and remand.

16 4. Defendant shall file its objections to Plaintiffs' request within five (5)
17 days from receipt of the request.

18 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
19 and forward copies to counsel.

20 **DATED** this 10th day of September 2018.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

26 Stanley A. Bastian
27 United States District Judge
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